



703 Market St., Suite 2000
San Francisco, CA 94103
Telephone: 415-546-7000
Fax: 415-546-7007
nhlp@nhlp.org
www.nhlp.org

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Colette Pollard, Departmental Reports Management Officer, QDAM,
Department of Housing and Urban Development
451 7th Street SW., Room 4160
Washington, DC. 20410-5000
[Sent only by e-mail: Collette.Pollard@hud.gov]

Re: Comments on *OMB Control Number 2577-0226*
Notice of Proposed Information Housing Agency (PHA) 5-Year and Annual Plan

Dear Ms. Pollard:

The National Housing Law Project (NHLP) is a charitable nonprofit national housing law and advocacy center. NHLP provides legal assistance, advice and housing expertise to attorneys, paralegals and tenant leaders nationwide to advance housing justice for low-income people. NHLP consults and works in coalition with advocacy groups, other intermediaries and policymakers. Since 1968, NHLP has worked extensively on innumerable housing justice issues under all of the major federal affordable housing programs.

The Housing Justice Network is a nationwide membership organization of over one thousand housing, legal services and civil rights advocates and attorneys, who represent clients living in or applying to federally-assisted housing programs.

Thank you for the opportunity to comment on the proposed information collection. We support a number of the proposed changes. However, all of these proposed changes would be improved substantially and would facilitate communication with residents and the public if they were more clearly stated. In addition, we urge HUD to reconsider the dramatic changes to the public housing agency (PHA) Plan documents affected in 2008. These changes were antithetical to the purpose for which Congress mandated public housing plans, thwart HUD's goal for the plans, and discourage, rather than encourage, resident engagement in the plan process.

The form HUD-50075 serves a dual purpose. It is the template used by public housing agencies for the development of the PHA 5-Year and Annual Plan. Significantly, it is also the document that residents and the public review to understand and identify the PHA's policies and rules. Hence, we agree with the statement in the instructions that "[t]he 5-Year and Annual PHA plans provide a ready source for interested parties to locate basic PHA policies, rules, and requirements concerning the PHA's operations, programs, and services, and informs HUD, families served by the PHA, and members of the public of the PHA's mission and strategies for serving the needs of low-income and very low-income

families.”¹ This statement should be highlighted and not buried amongst other more technical statements that are of less concern to and may serve to confuse the residents and the public. Thus, we urge that the majority of the provisions stated at the top of the instructions² be moved to the end of the instructions and the key sentence be highlighted as follows, in 16 point font.

The purpose of the 5-Year and Annual Plans is

- (1) to help residents, the Resident Advisory Board (RAB) and other interested parties to locate basic PHA policies, rules and requirements concerning the PHA’s operations programs, and services, and
- (2) to inform HUD, families served by the PHA, and member of the public of the PHA’s mission and strategies for serving the needs of low-income and very low-income families.

If the PHA Plan process is to serve these functions, it is imperative that it provide more substance and more transparency.

Tweaking the Template Misses the Real Issue

For the past several years, it has been apparent to advocates that the streamlining of the PHA Plan process has reduced access to information about PHAs’ intentions and operation. The 2008 revision of the 5-Year and Annual Plan documents dramatically narrowed and in some situations effectively eliminated PHAs’ obligations to disclose and explain their policies, practices and plans.

In 2007, when HUD published notice of its intent to eviscerate the plan template,³ the NHLP submitted comments as did the National Low Income Housing Coalition. The NHLP comments detail the

¹ Instructions Form HUD-50075 (2/2011).

² The remaining language in the top two introductory paragraphs of the Instructions to form HUD-50075 should be removed and placed at the end of the Instructions, as the information has little importance to residents or the public and may serve to confuse.

This information collection is authorized by Section 511 of the Quality Housing and Work Responsibility Act, which added a new section 5A to the U.S. Housing Act of 1937, as amended, which introduced 5-Year and Annual PHA Plans. ~~The 5-Year and Annual PHA plans provide a ready source for interested parties to locate basic PHA policies, rules, and requirements concerning the PHA’s operations, programs, and services, and informs HUD, families served by the PHA, and members of the public of the PHA’s mission and strategies for serving the needs of low-income and very low-income families.~~ This form is to be used by all PHA types for submission of the 5-Year and Annual Plans to HUD. Public reporting burden for this information collection is estimated to average 5.25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not collect this information, and respondents are not required to complete this form, unless it displays a currently valid OMB Control Number.

Privacy Act Notice. The United States Department of Housing and Urban Development is authorized to solicit the information requested in this form by virtue of Title 12, U.S. Code, Section 1701 et seq., and regulations promulgated there under at Title 12, Code of Federal Regulations. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

³ Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Public Housing Agency Plan, 72 Fed. Reg. 25770 (May 7, 2007),

inescapably obvious consequences of reducing a 40+ page template (even granting the serious limitations of its structure and format) to a two page template.

Now, as then, we believe that the truncation of the form has affected a disservice to residents and other interested community partners. Neither the two-page Form HUD-50075 of 2/2008 nor this proposed successor (2/2011) provides residents, their leaders, advocates or HUD sufficient useful information about a PHA's policies, practices and plans, nor do the present or proposed forms provide a foundation for active resident engagement or comment. These facial and structural barriers are exacerbated by the resistance of many PHAs to disclosure of their plans and to release of documents that are absolutely necessary to wrest even the most rudimentary meaning from the cryptic face of the template.

With regard to fair housing/civil rights issues, HUD is aware that processes such as the submission of a Civil Rights Certification (form HUD-50077-CR) do not provide residents or the interested public with substantive information. Certifying entities may blindly sign the form or worse, find the temptation to obscure substance and detail overwhelming. HUD's experiences with similar certifications related to CDBG and HOME funding in Westchester County, New York, Waukesha County, Wisconsin,⁴ St. Bernard Parish, Louisiana,⁵ Marin County, California⁶ and others, belie the efficacy of such certifications.

Given the Department's reevaluation of this information collection, we urge you to consider modifications that require a more open and effective communication of a PHA's goals, practices and intentions. This could partly be accomplished by:

- 1) providing, on the form or in the instructions, a list of all supporting documents necessary for an understanding of the 5-Year and Annual Plan;
- 2) requiring every PHA to make available electronically the 5-Year and Annual Plan and all supporting documents and information and notice of the location and availability of hard copies of the documents;
- 3) requiring each PHA to identify and describe, in clear, concise language, each change in any plan element;
- 4) requiring PHAs proposing to demolish or dispose of public housing to provide in the Annual Plan information regarding replacement units and initial determinations regarding all applicable fair housing/civil rights implication of the proposed activity, and
- 5) incorporating limited English proficiency (LEP) and reasonable accommodation plan requirements explicitly into the form and the certification.

Proposed Changes to Form HUD-50075, PHA 5-Year and Annual Plan

We support several proposed changes to the proposed form HUD-50075 (2/2011) and suggest further improvement.

⁴ Housing Discrimination Complaint, Metropolitan Milwaukee Fair Housing Council v. Waukesha County, Wisconsin (March 15, 2011), <http://www.fairhousingwisconsin.com/PDF/Article%20-%20Waukesha%20HUD%20Complaint%203-15-11.pdf>.

⁵ Letter from Mercedes M. Marquez, HUD, to Paul W. Rainwater, State of Louisiana (March 17, 2011), http://www.gnofairhousing.org/pdfs/2011-03-17_Marquez_Letter.pdf. Letter from John Trasvina, HUD, to Craig P. Taffaro, Jr., St. Bernard Parish (March 17, 2011), http://www.gnofairhousing.org/pdfs/2011-03-17_Trasvina_letter.pdf.

⁶ Agreement for Voluntary Compliance, signed on behalf of Marin County on November 30, 2010 and on behalf of HUD on December 22, 2010, <http://www.hud.gov/offices/fheo/library/10-Marin-VCA-final-12-21-2010.PDF>.

Section 1.0 PHA Information.

If the template uses acronyms or terms with unique definitions, they should be spelled out and described somewhere on the form or a reference should be provided as to where these terms are defined. HCV should be defined in the instructions and the terms “Qualified,” “High Performer,” “Standard” and “Troubled” explained by, at the minimum, reference to the C.F.R. cite that defines the terms.

The box that currently states “HCV (Section 8)” should be clarified to state “Administers HCV (Section 8) only.”

This section should also ask a PHA to set forth the percentage of non-English speakers by language served by the PHA as tenants and participants and the percentage of non-English speakers who are income eligible to as applicants. This information is necessary because of the obligation to address, in certain situations, the needs of those with limited English proficiency (LEP).

Section 5.3 Violence Against Women Act (VAWA).

The addition of Section 5.3 is a welcome improvement. We are particularly heartened by the requirement that the PHAs specifically identify the interdependent components of “goals, objectives, policies, or programs.”

Section 6.0 Annual Plan subsection (a).

The enumeration of the Plan Elements on the face of the template is an improvement over the form HUD-50075 (4/2008), which required that a resident or other member of the public look to the Instructions for the itemized list. The itemized list could be substantially improved if the language was clarified to inform residents and the public of what is required by each element. For example, we believe that the language on the attached document, Attachment A, should briefly describe for residents what to anticipate for each of the 19 elements.

The statement in this section and in the accompanying “Instructions form HUD-50075” that PHAs need not describe the actual change is poor policy and is misleading, at best. PHAs should be instructed to do the opposite, i.e., to describe the actual changes. It would be the better policy as it would provide guidance to the residents and may be valuable to PHAs that are seeking information on how other PHAs are responding to similar issues. It also may benefit HUD by informing HUD that the PHA is engaging or working to engage the residents and the public by summarizing changes. Moreover, HUD may benefit as it may determine in reviewing the plans that there are patterns of issues, problems, etc. that ought to be addressed nationally. Without descriptions of changes, it is and will continue to be extremely difficult for any interested party to identify the actual change. PHAs should have the responsibility to state in clear and concise language how the PHA Plan elements have changed, what new or different result is desired and/or how they intend to act differently in order to produce that result. The check box format, with no further explanation requires that readers be in possession of the prior year’s plan and the proposed plan, together with all of the supporting documents.

At the very minimum, if the purpose of the statement is that the description of the changes need not be submitted to HUD that should be clarified. (Nevertheless, the preferred result is to require that a summary of the changes be submitted to HUD). PHAs should not be able to rely on the statement in the template to decline to identify and describe for the residents and the public changes in the documents setting forth the PHA’s Plan elements.

Section 6.0 Annual Plan subsection (b).

We support the added requirement for addresses to identify the locations of the 5 -Year and Annual Plan for review. It is also important that a location may be the PHAs website. However, residents should always have access to a hard copy of the PHA Plan. If a website is used, the PHA should be instructed to provide the exact URL for the document and any attachments. Some PHAs have many subpages or the PHA's webpage is buried in a local housing and community development agency website, making it difficult to find the sought for documents. For those PHAs without websites, HUD should make available a location on the HUD website to post proposed plans in addition to the currently posted approved plans.

Most important, the PHA Plan should be clear that the 5-Year and Annual Plan must be available together with all supporting documents. In the first sentence of this section, we urge the insertion of the following: together with all supporting documents. Also, the PHA Plan Template should be revised to provide a list of the key supporting documents and require that the PHA check a box indicating whether the document is applicable and the location of where the document is on display for review. The list of documents should be similar to the list set forth in PIH 2003-21 (Deregulation for Small Public Housing Agencies (PHAs) and Submission Requirements for New Small PHA Streamlined Annual PHA Plans). In addition, the list should include the PHA's Language Access Plan and a list of what documents if any have been translated, the PHA's reasonable accommodation policy, fair housing documentation including any analysis of the PHA's obligation to affirmatively further fair housing and any adverse findings in audit/management review or requirement for affirmative action under a voluntary compliance agreement (VCA). If there are policies unique to HOPE VI and Mixed Finance, those polices should be referenced on the list.

These changes would promote HUD's goals of transparency by providing residents and other interested parties with some assurance that they know about and may obtain documents key to the planning process. Each of these documents should be available electronically and a hard copy available for review by residents, resident councils and members of the Resident Advisory Board (RAB).

Section 6.1 Deconcentration.

The statutory provisions governing PHA Plans provide "that the Secretary shall review the information submitted in each plan pursuant to paragraphs (3)(B), (8) and (15) of subsection (d) of this section. 42 U.S.C. § 1437c—1(i)(2). Consistent with that requirement, we support the addition to the PHA Plan Template requiring PHAs to attach a copy of the PHA's admission policy for deconcentration of lower-income families.

Section 6.2 HOPE VI, Mixed Finance, Modernization, Development, Demolition and /or Disposition, Conversion of Public Housing, Homeownership Programs, Project-based Vouchers, and other discretionary programs as applicable.

This section also provides that the PHA must "include a statement related to these programs as applicable." The Instructions for this section with respect to demolition or disposition of public housing are not sufficiently specific. The Instructions should include a requirement that PHA's must address the development of replacement units. In addition, the template should state that the PHA must address all applicable fair housing/civil rights implications of proposed activities at the time such

activities are first proposed in the plans. We suggest that the instructions be revised to add the following.⁷

Add to 6.2 of the Instructions a new subsection (a) and renumber the remaining proposed subsections (b)—(f). The new subsection (a) should provide as follows.

- (a) Any statement regarding HOPE VI, Mixed Finance Modernization or Development, Demolition and/or Disposition, Conversion of Public Housing, Homeownership Programs, and Project-based Vouchers, must include a fair housing evaluation. The PHA must comply with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990 and affirmatively further fair housing by evaluating the proposed action, by identifying any impediments to fair housing choice, by addressing those impediments and by working with local jurisdictions to implement initiatives to affirmatively further fair housing.
- (b) Change this subsection to (c) to add that the PHA must describe whether it will develop replacement units (ACC or PBV) in connection with a demolition/disposition and where those units will be located.
- (e) Project-based vouchers. There is a typo. In the clause beginning with “including,” replace the word “on,” with the word “of.”

In addition, a number of residents and advocates have expressed concern that the Plan elements on planned disposition/disposition are used as a “placeholder,” with the details regarding redevelopment and the number and characteristics of replacement housing units to be spelled out in the Mixed Housing Finance proposal that is submitted to the Special Application Center (SAC). However, the materials that go to SAC are not themselves required to be subject to public/RAB review as part of the PHA Plan process, and they should be. Otherwise, residents and advocate partners are often in the dark about what will be lost and what will be gained in redevelopment, and whether the tradeoffs are appropriate, whether all reasonable options were considered, and if there have been sufficient protections of long-term affordable housing and residents.

Section 7.0 Required Submission for HUD Field Office Review.

PHAs are instructed by the PHA Plan Desk Guide to provide the name of the RAB members. *See* Public Housing Agency [PHA] Plan, Desk Guide, 4.6. Some PHAs have declined to provide this information based upon claims of privacy. The template should require that the names, affiliations and contact information of RAB members be listed. Residents serving in a public capacity, representing residents and advising PHAs on their PHA Plans should be accessible to other residents. In fact PHAs are obligated to assist RAB members in communicating with other assisted families and holding meetings with them. 24 C.F.R. § 903.13(a)(2). HUD should also be interested in knowing who these

⁷ These suggestions are consistent with the description provided by Assistant Secretary Henriquez regarding how the PHA plan process ought to work and the requirements of 24 C.F.R. Part 903. In a letter, she described the process as follows.

In addition, many of the concerns you raise should be addressed by PHAs as part of the PHA Plan process and prior to the submission of a demolition/disposition application. For instance, 24 CFR Part 903 requires PHAs to include in their PHA Plans all planned public housing development (including development of “replacement units” in connection with demolition/disposition) and all proposed future demolition/disposition activities. Moreover, pursuant to 24 CFR Parts 5 and 903, PHAs should be addressing all applicable fair housing/civil right implication of proposed demolition/disposition activities (including their duties to affirmatively further fair housing) at the time such activities are first proposed in their PHA Plans.

Letter from Sandra B. Henriquez, HUD to Catherine Bishop, NHLP, and the Housing Justice Network (April 21, 2011) 2.

individuals are and how to contact them. To the extent that there are local rules that might prevent the publication of RAB member names and contact information, a PHA should be required to note in the Annual Plan that the names and contact information for RAB members is available upon request.

Item (h) Challenged Elements. HUD should require that a PHA submit challenged elements from any source including the RAB. The submission of challenged elements should not be limited to those elements challenged only by the RAB.

Instructions form HUD—50075

6.0 subparagraph 7. Community Service and Self-Sufficiency.

The note following this instruction states as follows (Note: applies only to public housing). This note is confusing. Items (1) and (2) are applicable to both the voucher program and public housing. 24 C.F.R. § 903.7(1)(2). It is only item (3) referring to community service and treatment of income changes resulting from welfare program requirements that is applicable only to public housing. PHAs and residents should be aware that the first two sections of the community service and self sufficiency requirements must be filled out by PHAs that administer public housing and HCV, public housing only and HCV (Section 8) only. The note should be changed as follows. “(Note that items (1), (2) and (3) (treatment of income changes resulting from welfare program) apply to public housing and the voucher program, whereas the community service item in (3) applies to only public housing).” See 24 C.F.R. § 903.7(1).

6.0 subparagraph 2 Financial Resources.

PHAs have converted to an asset management and project based accounting and budgeting model. Residents should be alerted to this change and that it has an impact on the planning process. These instructions should be revised to add that “budgets for individual developments may be prepared and approved by the PHA Board on a different timeframe. For more information regarding these development budgets, contact the local PHA.”

6.0 subparagraph 12. Asset Management.

Previously, NHLP recommended that the instructions to this subsection cross reference to the asset management rules and the asset management website. HUD, by letter from Milan M. Ozdinec, January 18, 2008, agreed. However the cross reference to the website never was added to the Template instructions. We again urge that the website reference be added. The reference will assist residents in distinguishing between asset management as used in the PHA Plan process and asset management and project-based budgeting.

6.2 Demolition and/or Disposition or Conversion.

HUD is developing policies regarding the conversion of public housing, moderate rehabilitation and other project-based housing to a new funding process. For the public housing units, those that are going to be converted should be identified and information provided, such as the number and size of the units, the type of action proposed (demolition/disposition and/or conversion), a timetable for action, a statement of the anticipated amount of assistance/financing available for the conversion, and a statement of key policies regarding the conversion. This should also include conversions from the Project-Based Certificate program.

In addition, many moderate rehabilitation and project-based developments that may be converted are owned by local PHAs. If slated for conversion, demolition or disposition, these developments ought to

be identified in any planning process. We urge HUD to include in this section of the instructions a new section entitled “Demolition/disposition or Conversion of PHA Owned and HUD Assisted Developments (non public housing).” Each such development should be identified and minimal information provided, such as number of units, size of the units, the type of action proposed (demolition/disposition and/or conversion), a timetable for action and the statement of the anticipated amount of assistance available for the conversion.

7.0 subsection (i) RAB comments. The description of what is to be submitted should include the following “RAB comments and a description of the manner in which the recommendations were addressed.”

Form HUD-500077, PHA Certification of Compliance with PHA Plans and Related Regulations

Paragraph 6 of this form should be amended to reference the relevant regulations, so as to be consistent with the other paragraphs in this document and to highlight the LEP requirements. Thus at the end of the current statement add “including implementing regulations at 24 CFR Parts 1 (nondiscrimination in federally assisted programs of the Department of Housing and Urban Development), 8 (Nondiscrimination based on handicap) and 9 (Enforcement of nondiscrimination on the basis of disability) and “Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons” (“HUD Final LEP Guidance”) 72 Federal Register 2732.”

Form HUD 50077-CR, Civil Rights Certification

HUD is proposing a separate Civil Rights Certification to be signed by the Chairman of the PHA or other authorized individual. We think that this is a good idea and it is supported by the statute. 42 U.S.C. § 1437c—1(d)(16). However, the statement is too abbreviated. It should be expanded to provide more meaning to the principal of affirmatively further fair housing (AFFH). Despite fact that AFFH, has been the standard for decades, it is not necessarily been enforced, nor has HUD adopted performance standards.⁸ Thus, at a minimum we recommend that the following language, taken from 24 C.F.R. 903.7(o) be added to the Civil Rights Certificate, form HUD 50077, after the words “and will affirmatively further fair housing.”

by examining their programs or proposed programs, identifying any impediments to fair housing choice within those programs, addressing those impediments in a reasonable fashion in view of the resources available and working with local jurisdictions to implement any of the jurisdiction’s initiatives to affirmatively further fair housing that require the PHA’s involvement and by maintaining records reflecting this analyses and actions.

But more substantively, the certification should contain a description explaining how the specific decisions and actions outlined in the PHA Plan will positively or negatively impact protected groups (and if negatively the mitigation measures that will be taken) and how they will affirmatively further fair housing, and should reference supporting analyses of those decisions or actions, data and other documents that provide the basis for the certification. This supporting analysis should be cumulative, discussing the actions and resulting impacts of actions taken by the PHA, during its 5 Year Plan period

⁸ Once HUD issues performance standards as part of the forthcoming Affirmatively Furthering Fair Housing regulation, we would expect the AFFH Certification to be coordinated with and conformed to those regulations.

at a minimum. As noted above, the supporting analysis should be included in the list of supporting documents

If deemed desirable or necessary, in keeping with the form of the PHA Plan template, a checklist of actions could also be included listing PHA actions that could potentially affirmatively further fair housing. PHAs could then check off and provide supporting documentation of actions that it is taking to affirmatively further fair housing.⁹

Certificate by State or Local Official of PHA Plans Consistency with the Consolidated Plan

HUD is proposing a separate Certification form for the signature of an appropriate state or local official that the PHA Plan is consistent with the Consolidated Plan (ConPlan). As with the Civil Rights Certification, this form provides too little information. In addition, it fails to provide the required information. The Certification must provide a description of the manner in which the PHA plan is consistent with the ConPlan. 42 U.S.C. § 1437c—1(c)(2)(B). To improve the form and make it consistent with the statute, the Certificate should provide the following information.

I, _____, the _____ certify that the 5-Year and/or Annual Plan of _____ is consistent with the Consolidated Plan and the Analysis of Impediments (AI) of _____, as described below.

Provide a description of how the PHA Plan is consistent with the ConPlan and the AI.

In addition, the ConPlan Certification must have a statement that the information is true and accurate and a warning regarding false claims and penalties.

Conclusion

We recognize that the presently proposed changes are, to a large degree, designed to bring this information collection into compliance with the Housing and Economic Recovery Act of 2008. We

⁹ HUD's Fair Housing Planning Guide provides non-exhaustive listing of many suggested actions and HUD's Strategic Plan also offers specific strategies that could be included in a checklist. For example, a PHA could check that it has adopted exception payment standards to expand families' choices of affordable rental homes located in a broad range of communities and to improve the quality of housing and communities opportunities of voucher holders. A PHA that is undertaking demolition and replacement housing in a racially segregated area could check that it is expanding the supply of public housing in non-minority areas and decreasing racial segregation in neighborhoods and communities through the development of replacement housing in non-minority areas. A PHA that is demolishing housing in a racially integrated and potentially gentrifying area, on the other hand, could check that it is preserving integrated housing opportunities by replacing all of the demolished housing in that neighborhood. A PHA could check that it is providing mobility counseling and housing search assistance to help families address barriers to mobility and portability in the voucher program and to increase to access racially integrated and high performing schools in low poverty areas.

encourage the Department to use the opportunity to make meaningful change which will reopen the Plan process to active and constructive resident engagement and encourage an environment in which residents and PHAs can move forward in common cause rather than in contentious adversity. We also endorse and support the comments submitted by the National Low Income Housing Coalition.

Thank you for this opportunity to comment. If you have any questions, please feel free to contact Catherine Bishop, at cbishop@nhlp.org or 415-546-7000 ext. 3105.

Very truly yours,

Catherine Bishop
Senior Staff Attorney
Stephen Rutkowski III
Volunteer Attorney
National Housing Law Project

Mac McCreight
Greater Boston Legal Services

Lori Schwartz
Legal Aid Legal Aid Service of Broward County, Inc.

Erik Crawford, President
Davidson/Site 166 Resident Association Inc
Member of the Citywide Resident Advisory Board, NYCHA

Phil Tegeler
Poverty & Race Research Action Council

Encl: Attachment A